S.B. Civil Writ Misc. Application No.48/2005

M/s. Modern Woollens (P) Ltd.
vs.
State of Rajasthan and others.

Date : 6.7.2006

HON'BLE MR. PRAKASH TATIA, J.

Mr. Vikas Balia, for the petitioner/applicant.
Mr. U Ghani, for the respondents.

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Heard learned counsel for the parties.

The petitioner's writ petition no.3556/2002 was dismissed by this Court as infructuous by order dated 8.2.2005. The petitioner has moved this application for recalling of the order dated 8.2.2005 on the grounds that though the petitioner as such had not challenged the vires of Rules i.e. Nagar Parishad Bhilwara (Pradushan-Janya Vyavsay Kar) Niyam, 2001 (for short 'the Rules of 2001'), validity of which has been upheld by the Division Bench of this Court. The petitioner also challenged the notification dated 28.11.2001 (Annex.4 in the writ petition) and that has been withdrawn by the State. Therefore, this Court held that challenge to the notification dated 28.11.2001 has become infructuous. However, for other reliefs, the petitioner was permitted to take legal course in accordance with law.

The petitioner's grievance is that it has not got all the reliefs as claimed in the writ petition which are as under :-

> “(i) by the writ of prohibition, Respondent No.3 may kindly be prohibited from realising tax from the petitioner company on the import of natural raw wool used for production of woollen yarn, carpets and woollen tops in pursuance of Notification dated 28-11-2001.
>
> (ii) By a writ, order or direction, Respondents be directed to refund the tax already realised from the petitioner company till date in pursuance of the Notification Ann/4 dated 28-11-2001.
>
> (iii) That Respondents may be restrained from taking any coercive action against the Petitioner without affording it any opportunity of hearing.
>
> (iv) Pending decision of the writ petition, if any further order is made or action is taken prejudicial to the interest of the petitioner, same may also be quashed and set aside.
>
> (v) Any other relief may also be granted in favour of the petitioner, as may be deemed just and proper by this Hon'ble Court, in the facts and circumstances of the case.
>
> (vi) Costs be awarded in favour of the petitioner.”

Though the petitioner has been given liberty to take legal course in accordance with law but by that time, the remedy of appeal became barred by time and nothing has been observed for condonation of delay for preferring appeal by the petitioner as the petitioner's writ petition was pending before this Court till it was decided on 8.2.2005.

Though the respondents have not filed any reply to this application despite taking various adjournments, but learned counsel for the respondents submits that this Court has permitted the petitioner to take legal course in accordance with law, therefore, the petitioner can prefer the appeal against the order against which the petitioner is aggrieved and for the reliefs for which the petitioner thinks itself entitled.

In view of the above, all the reliefs claimed in the writ petition has not been given to the petitioner nor he got the said reliefs by withdrawal of the notification dated 28.11.2001. In the writ petition, none of the points raised by the petitioner has been decided and the writ petition has been dismissed merely on the ground that since the notification dated 28.11.2001 has been withdrawn by the State Government, therefore, the writ petition has become infructuous. While doing so, this Court observed that the petitioner will be free to take any other legal course for its reliefs.

In these circumstances, it is clear from the intention

of the order dated 8.2.2005 that the petitioner could have preferred appeal with application for condonation of delay and this Court has not left the petitioner remediless so as to grant permission to the petitioner to take legal course when the legal course became barred by law.

In view of the above, it is clarified that in case, the petitioner prefers an appeal within a period of four weeks from today with an application for condonation of delay, then the Appellate Authority may consider the issue of condonation of delay sympathetically taking into account all the facts.

Accordingly, this application is disposed of with the above clarification.

(PRAKASH TATIA), J.

S.Phophaliya